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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GARY BUSHEY, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

KKR FINANCIAL HOLDINGS LLC,
PAUL M. HAZEN, CRAIG J. FARR,
TRACY COLLINS, ROBERT L.
EDWARDS, VINCENT PAUL
FINIGAN, R. GLENN HUBBARD,
ROSS J. KARI, ELY L. LICHT,
DEBORAH H. MCANENY, SCOTT C.
NUTTALL, SCOTT RYLES, WILLY
STROTHOTTE, KKR & CO. L.P., KKR
FUND HOLDINGS L.P., and COPAL
MERGER SUB LLC,

Defendants.

Case No.:

**CLASS ACTION COMPLAINT FOR
BREACH OF FIDUCIARY DUTIES
AND VIOLATIONS OF FEDERAL
SECURITIES LAWS**

DEMAND FOR JURY TRIAL

1 Plaintiff, by his undersigned attorneys, for this class action complaint against defendants,
2 alleges upon personal knowledge with respect to himself and upon information and belief based
3 upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

4 **NATURE OF THE ACTION**

5 1. This is a class action on behalf of the public stockholders of KKR Financial
6 Holdings LLC (“KFN” or the “Company”) against KFN and its Board of Directors (the “Board”
7 or the “Individual Defendants”), to enjoin a proposed transaction announced on December 16,
8 2013 (the “Proposed Transaction”), pursuant to which KFN will be acquired by KKR & Co.
9 L.P. (“KKR”), KKR Fund Holdings L.P., an exempted limited partnership (“Fund Holdings”),
10 and its wholly-owned subsidiary, Copal Merger Sub LLC (“Merger Sub”).

11 2. On December 16, 2013, the Board caused KFN to enter into a definitive agreement
12 and plan of merger (the “Merger Agreement”), pursuant to which KKR will acquire all of the
13 outstanding shares of Company common stock in a stock-for-stock transaction, with KFN’s
14 stockholders receiving only 0.51 common units of KKR for each common share of KFN, which
15 is an implied value for KFN of \$12.79 per share based on the closing prices of KFN and KKR
16 the day the Merger Agreement was executed and announced. At the time of the approval and
17 execution of the Merger Agreement, KKR common units were trading at a price near their 52-
18 week high, while KFN common shares were trading at a price near their 52-week low, thus
19 distorting the fairness of the consideration offered in the Proposed Transaction.

20 3. The Proposed Transaction is the product of an unfair process and deprives KFN’s
21 public stockholders of the ability to participate in the Company’s long-term prospects.
22 Furthermore, in approving the Merger Agreement, the Individual Defendants breached their
23 fiduciary duties to plaintiff and the Class (defined herein). Moreover, as alleged herein, KFN
24 aided and abetted the Individual Defendants’ breaches of fiduciary duties. Plaintiff also brings
25 claims against the defendants for their violations of Sections 14(a) and 20(a) of the Securities
26 Exchange Act of 1934 (the “Exchange Act”) and Rule 14a-9 promulgated thereunder (“Rule
27 14a-9”).
28

4. KKR indirectly, externally manages KFN's day-to-day operations, including performing all services relating to the management of KFN's assets, liabilities and operations, and providing KFN with its management team and support personnel. Moreover, KFN has no employees; rather, all of KFN's executive officers and two of its directors are employees of KKR or one or more of its subsidiaries. Furthermore, KKR placed six of KFN's current directors on the board of KFN's predecessor, KKR Financial. As such, KKR controls KFN and the Proposed Transaction must be entirely fair as to process and price. As described herein, the Proposed Transaction is not entirely fair.

5. Compounding the unfairness of the Proposed Transaction, defendants issued materially incomplete and misleading disclosures in the Registration Statement filed on Form S-4 with the United States Securities and Exchange Commission ("SEC") on January 15, 2014 (the "Registration Statement"). The Registration Statement is deficient and misleading in that it fails to provide adequate disclosure of all material information related to the Proposed Transaction.

6. Plaintiff seeks enjoinder of the Proposed Transaction or, alternatively, rescission of the Proposed Transaction in the event defendants are able to consummate it.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction), as plaintiff alleges violations of Sections 14(a) and 20(a) of the Exchange Act and Rule 14a-9 promulgated thereunder. The Court has supplemental jurisdiction over any claims arising under state law pursuant to 28 U.S.C. § 1367.

8. This Court has personal jurisdiction over each of the defendants because each either is organized under the laws of, conducts business in, and maintains operations in this District, or is an individual who either is present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because: (a) one or more of the defendants either resides in or maintains executive offices here; (b) a substantial

1 portion of the transactions and wrongs complained of herein occurred here; and (c) defendants
 2 have received substantial compensation and other transfers of money here by doing business
 3 here and engaging in activities having an effect here.

4 **PARTIES**

5 10. Plaintiff is, and has been continuously throughout all times relevant hereto, the
 6 owner of KFN common stock.

7 11. Defendant KFN is a Delaware corporation and maintains its principal executive
 8 offices at 555 California Street, 50th Floor, San Francisco, California 94104. The Company,
 9 together with its subsidiaries, operates as a specialty finance company with expertise in a range
 10 of asset classes. KFN's credit segment primarily invests in financial assets, such as below
 11 investment grade corporate debt comprising senior secured and unsecured loans, mezzanine
 12 loans, private and public equity investments, high yield bonds, distressed and stressed debt
 13 securities, and marketable equity securities. KFN's common stock is traded on the NASDAQ
 14 under the ticker symbol "KFN."

15 12. Defendant Paul M. Hazen ("Hazen") currently serves as Chairman of the Board.
 16 Hazen is also Chairman of Accel-KKR and is a senior advisor to KKR.

17 13. Defendant Craig J. Farr ("Farr") has served as a KFN director since 2006.
 18 According to the Company's website, Farr is KFN's Chief Executive Officer ("CEO"). Farr is
 19 also the head of KKR Asset Management LLC, an affiliate of KKR.

20 14. Defendant Tracy Collins ("Collins") has served as a KFN director since August
 21 2006. Collins is a member of the Audit and Compensation Committees.

22 15. Defendant Robert L. Edwards ("Edwards") has served as a KFN director since
 23 November 2011. Edwards is a member of the Audit Committee.

24 16. Defendant Vincent Paul Finigan ("Finigan") has served as a KFN director since
 25 February 2006. Finigan is Chair of the Affiliated Transactions Committee and is a member of
 26 the Compensation and Nominating & Corporate Governance Committees.

27 17. Defendant R. Glenn Hubbard ("Hubbard") has served as a KFN director since
 28 October 2004. Hubbard is Chair of the Nominating & Corporate Governance Committee and is

1 a member of the Audit Committee.

2 18. Defendant Ross J. Kari (“Kari”) has served as a KFN director since August 2004.
3 Kari is Chair of the Audit Committee.

4 19. Defendant Ely L. Licht (“Licht”) has served as a KFN director since April 2005.

5 20. Defendant Deborah H. McAneny (“McAneny”) has served as a KFN director
6 since April 2005. McAneny is Chair of the Compensation Committee and is a member of the
7 Nominating & Corporate Governance and Affiliated Transactions Committees.

8 21. Defendant Scott C. Nuttall (“Nuttall”) has served as a KFN director since 1996.
9 Nuttall is also the head of KKR’s Global Capital and Asset Management Group, and is actively
10 involved in other companies and funds associated with KKR.

11 22. Defendant Scott Ryles (“Ryles”) has served as a KFN director since November
12 2008. Ryles is a member of the Audit and Affiliated Transactions Committees.

13 23. Defendant Willy Strothotte (“Strothotte”) has served as a KFN director since
14 January 2007. Strothotte is a member of the Compensation and Affiliated Transactions
15 Committees.

16 24. The defendants identified in paragraphs 12 through 23 are collectively referred to
17 herein as the “Individual Defendants.” By virtue of their positions as directors and/or officers of
18 KFN, the Individual Defendants are in a fiduciary relationship with plaintiff and the other public
19 stockholders of KFN.

20 25. Each of the Individual Defendants at all relevant times had the power to control
21 and direct KFN to engage in the misconduct alleged herein. The Individual Defendants’
22 fiduciary obligations required them to act in the best interest of plaintiff and all KFN
23 stockholders.

24 26. Each of the Individual Defendants owes fiduciary duties of loyalty, good faith,
25 due care, and full and fair disclosure to plaintiff and the other members of the Class. The
26 Individual Defendants are acting in concert with one another in violating their fiduciary duties
27 as alleged herein, and, specifically, in connection with the Proposed Transaction.

27. Plaintiff alleges herein that the Individual Defendants, separately and together, in connection with the Proposed Transaction, violated, and are continuing to violate, the fiduciary duties they owe to plaintiff and the Company's other public stockholders, due to the fact that they have engaged in all or part of the unlawful acts, plans, schemes, or transactions complained of herein.

28. Defendant KKR is a Delaware corporation with its corporate headquarters located at 9 West 57th Street, Suite 4200, New York, New York 10019.

29. Defendant Fund Holdings is an exempted limited partnership formed under the laws of the Cayman Islands.

30. Defendant Merger Sub is a Delaware corporation and a wholly-owned subsidiary of Fund Holdings.

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action as a class action, pursuant to Federal Rule of Civil Procedure 23, on behalf of himself and the public stockholders of KFN (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

32. This action is properly maintainable as a class action.

33. The Class is so numerous that joinder of all members is impracticable. As of October 30, 2013, there were approximately 204,824,159 shares of KFN common stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

34. Questions of law and fact are common to the Class, including, among others:

a. Whether defendants have breached their fiduciary duties owed to plaintiff and the Class; and

b. Whether defendants will irreparably harm plaintiff and the other members of the Class if defendants' conduct complained of herein continues.

35. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the

1 other members of the Class and plaintiff has the same interests as the other members of the
 2 Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and
 3 adequately protect the interests of the Class.

4 36. The prosecution of separate actions by individual members of the Class would
 5 create the risk of inconsistent or varying adjudications that would establish incompatible
 6 standards of conduct for defendants, or adjudications that would, as a practical matter, be
 7 dispositive of the interests of individual members of the Class who are not parties to the
 8 adjudications or would substantially impair or impede those non-party Class members' ability to
 9 protect their interests.

10 37. Defendants have acted, or refused to act, on grounds generally applicable to the
 11 Class as a whole and are causing injury to the entire Class. Therefore, final injunctive relief on
 12 behalf of the Class is appropriate.

13 **SUBSTANTIVE ALLEGATIONS**

14 ***Background of the Company***

15 38. According to its website, KFN is a specialty finance company with expertise in a
 16 range of asset classes that generates income through its majority-owned subsidiaries. Those
 17 subsidiaries hold financial assets primarily consisting of corporate loans and securities,
 18 including senior secured and unsecured loans, mezzanine loans, high-yield corporate bonds,
 19 distressed and stressed debt securities, and marketable and non-marketable equity securities. In
 20 addition, those subsidiaries hold working and royalty interests in oil and natural gas properties,
 21 as well as interests in joint ventures and partnerships focused on commercial real estate and
 22 specialty lending.

23 39. KFN's core business strategy is to leverage the proprietary resources of its
 24 manager with the objective of generating both current income and capital appreciation.

25 ***KKR Controls KFN***

26 40. KKR controls KFN in a number of respects. For example, KFN is externally
 27 managed and advised by KKR Financial Advisors LLC (the "Manager"), pursuant to a
 28 management agreement between KFN and the Manager (the "Management Agreement"). The

1 Manager is a subsidiary of KKR Asset Management LLC, and an indirect subsidiary of
2 Kohlberg Kravis Roberts & Co. L.P., which is a subsidiary of KKR. Pursuant to the
3 Management Agreement, the Manager is responsible for KFN's operations and performs all
4 services relating to the management of KFN's assets, liabilities and operations, and provides
5 KFN with its management team and support personnel.

6 41. As the Company stated in its Annual Report, filed on Form 10-K with the SEC
7 on February 28, 2013:

8 ***We are highly dependent on our Manager and may not find a suitable***
9 ***replacement if our Manager terminates the Management Agreement.***

10 We have no employees. Our Manager, and its officers and employees, allocate a
11 portion of their time to businesses and activities that are not related to, or
12 affiliated with, us and, accordingly, its officers and employees do not spend all of
13 their time managing our activities and our investment portfolio. . . . We have no
14 separate facilities and are completely reliant on our Manager, which has
15 significant discretion as to the implementation and execution of our business and
investment strategies and our risk management practices. We are also subject to
the risk that our Manager will terminate the Management Agreement and that no
suitable replacement will be found. We believe that our success depends to a
significant extent upon the experience of our Manager's executive officers, whose
continued service is not guaranteed.

16 42. In addition, according to the Registration Statement, "[a]ll of KFN's executive
17 officers and Scott Nuttall and Craig Farr, two of KFN's directors, are employees of KKR or one
18 or more of its subsidiaries." The Registration Statement further states that "[d]ue to the
19 relationship created by the management agreement, members of the KFN board of directors and
20 the KFN management team routinely interact with representatives of KKR in the course of their
21 normal dealings with respect to KFN."

22 43. Furthermore, KKR founded KFN's predecessor, KFN Financial, in July 2004.
23 Since KKR Financial's founding but before it commenced its initial public offering, KKR
24 appointed six of KKR Financial's board members, which all currently serve on the twelve-
25 member Board. Accordingly, KKR controls the management and day-to-day operations of
26 KFN, and the Board is beholden to KKR.

KFN's Stockholders' Interests Will Be Drastically Diminished

44. Should the Proposed Transaction be consummated, KFN's stockholders' ownership and voting interests in KKR will be drastically diminished compared to their interests in KFN. For example, according to the Registration Statement, the KFN stockholders that receive KKR common units will own a "much smaller" percentage of KKR than the ownership percentage they currently own in KFN. Moreover, in contrast to the KFN's stockholders' current rights, holders of KKR common units are not entitled to elect KKR's general partner, and are not entitled to elect the directors of KKR's general partner. In addition, holders of KKR common units have only limited voting rights and, therefore, limited or no ability to influence management's decisions regarding KKR's business. Because of this, KFN common stockholders will have substantially less influence on the management and policies of KKR than they now have on the management and policies of KFN.

45. In addition, KKR's managing and general partner, KKR Management LLC, manages the business and affairs of KKR's business, and is governed by a board of directors that is co-chaired by KKR's founders, Henry Kravis ("Kravis") and George Roberts ("Roberts"), who also serve as KKR's co-CEOs. As the Registration Statement states: "Conflicts of interest may arise among KKR's managing partner and its affiliates, on the one hand, and KKR and holders of KKR common units, on the other hand. As a result of these conflicts, KKR's managing partner may favor its own interests and the interests of its affiliates over KKR and holders of KKR common units." This is so because KKR's managing partner, including its directors and officers, have limited their liability and reduced or eliminated their duties, including fiduciary duties, under KKR's partnership agreement, while also restricting the remedies available to holders of KKR common units for actions that, without these limitations, might constitute breaches of fiduciary duties.

The Company is Poised for Future Growth and Success

46. On July 23, 2013, KFN issued a press release announcing its financial results for the second quarter ended June 30, 2013. Among other things, the Company reported that net income available to common shareholders totaled \$79.2 million, an increase of 11% from the

1 same period of 2012, and net income per diluted common share totaled \$0.39. Moreover, a
2 quarterly cash distribution of \$0.21 per common share was declared for the second quarter of
3 2013, and book value per common share was \$10.41 as of June 30, 2013.

4 47. With respect to these results, William C. Sonneborn (“Sonneborn”), former CEO
5 of KFN, stated: “Market volatility during the second quarter provided us with an attractive
6 window to deploy some of our sizable cash balance. For example, we took the opportunity to
7 issue a new CLO, capitalizing on a less crowded market to accumulate a more favorably priced
8 loan portfolio than was possible in the first quarter.”

9 48. On September 26, 2013, the Company issued a press release announcing that the
10 Board declared a cash distribution of \$0.460938 per share on its outstanding 7.375% Series A
11 LLC Preferred Shares. The distribution was made payable on October 15, 2013 to the holders
12 of record of the Preferred Shares as of the close of business on October 8, 2013.

13 49. On October 23, 2013, KFN reported that a quarterly cash distribution of \$0.22
14 per common share was declared for the third quarter of 2013. Individual Defendant Farr, who
15 replaced Sonneborn as KFN’s CEO after he stepped down in July 2013, stated in the October 23
16 press release that “we found a number of attractive opportunities for capital deployment during
17 the quarter, and we’re focusing the business on cash-yielding, credit-oriented strategies in order
18 to drive ongoing shareholder value.”

19 50. In October 2013, KFN’s own financial advisor in connection with the Proposed
20 Transaction, Sandler O’Neill & Partners, L.P. (“Sandler O’Neill”), indicated that the
21 Company’s price target was \$25 per share. Moreover, Credit Suisse set a price target at \$21 per
22 share. Despite these price targets, the Company entered into the Merger Agreement for an
23 implied value of only \$12.79 per share for the Company.

24 51. Moreover, at the time of the approval and execution of the Merger Agreement,
25 KFN’s common shares were trading at a price near their 52-week low, but were on the verge of
26 significantly increasing to account for the Company’s improved financial condition.

27 52. Given KKR’s control over the Company’s management and the Board, KKR was
28 aware of KFN’s poise for growth and success in the near future. Attempting to take advantage

1 of the Company's then-depressed trading price, KKR caused KFN to enter into the Merger
2 Agreement following a wholly-inadequate process, as detailed below.

3 ***The Unfair Process Leading Up to the Proposed Transaction***

4 53. The Proposed Transaction is the result of an unfair process that was tilted in
5 favor of KKR. After receiving an acquisition proposal from KKR, the Board did not conduct a
6 market check or even consider seeking alternative bidders. Moreover, despite the fact that the
7 Board established a committee to consider the Proposed Transaction, the members of the
8 committee are beholden to KKR.

9 54. In October 2013, KKR informed Individual Defendant Hazen, Chairman of the
10 Board and senior advisor to KKR, that KKR was considering making an offer to acquire KFN.
11 On October 22, 2013, the Board held a regularly scheduled meeting, during which Hazen
12 informed the Board of KKR's acquisition overtures. The Board discussed the possibility of
13 such an offer, including that the confidentiality restrictions in the Management Agreement could
14 be read to require that KKR obtain authorization from KFN prior to completing the analysis
15 necessary to make any acquisition proposal. After discussion, the Board (including Individual
16 Defendants Nuttall and Farr, who are employed by KKR) granted KKR permission to use the
17 information it had about KFN, as well as to access additional information about KFN (although
18 it is unclear what additional information), to make an acquisition proposal. The Board allowed
19 this without first engaging and consulting with independent outside financial and legal advisors.
20 The Board also determined that if KKR made an acquisition proposal, the proposal would be
21 reviewed by a transaction committee, but the Board did not establish a committee at this time to
22 negotiate the terms of a proposal with KKR.

23 55. On October 30, 2013, KKR submitted a letter to KFN, proposing to acquire KFN
24 in a stock-for-stock transaction for 0.46 KKR common units in exchange for each KFN common
25 share.

26 56. On October 31, 2013, the Board held a telephonic meeting, during which it
27 designated a transaction committee comprised of purportedly independent directors, Individual
28

1 Defendants Collins, Edwards, Finigan, Kari, McAneny, and Ryles (the “Transaction
2 Committee”).

3 57. On November 6, 2013, the Transaction Committee held a telephonic meeting and
4 appointed Edwards as its Chair and retained Sandler O’Neill as its financial advisor and
5 Wachtell, Lipton, Rosen & Katz (“Wachtell Lipton”) as its legal advisor. The Registration
6 Statement does not disclose the reasons the Transaction Committee determined to retain these
7 advisors and whether the Transaction Committee considered other advisors.

8 58. On November 12, 2013, the Transaction Committee met again to consider the
9 terms of KKR’s proposal and ultimately determined to inform KKR that the proposed exchange
10 ratio of 0.46 KKR common units per KFN common share was too low and that the Transaction
11 Committee preferred a transaction consisting entirely of cash consideration.

12 59. On November 19, 2013, representatives of KKR contacted representatives of
13 Sandler O’Neill to communicate a revised proposal for KKR to acquire KFN for consideration
14 consisting entirely of KKR common units, at an exchange ratio of 0.48 KKR common units per
15 each KFN common share. KKR informed Sandler O’Neill that KKR was unwilling to consider
16 a transaction in which any portion of the consideration included cash.

17 60. On November 21, 2013, the Transaction Committee held a telephonic meeting,
18 during which it discussed the terms of the revised acquisition proposal made by KKR with its
19 advisors. The Transaction Committee determined to inform KKR that the proposed exchange
20 ratio of 0.48 KKR common units per KFN common share still did not offer sufficient value to
21 KFN’s stockholders and that the Transaction Committee continued to view a transaction
22 including cash consideration as more preferable than an all-equity transaction.

23 61. On November 26, 2013, KKR submitted a revised proposal to acquire KFN for
24 consideration consisting entirely of KKR common units, at an exchange ratio of 0.50 KKR
25 common units per KFN common share. KKR also indicated that KKR remained unwilling to
26 consider a transaction in which the consideration included any portion of cash, and that the
27 current offer was KKR’s best and final offer.

62. On December 9, 2013, Individual Defendant Hubbard, who is not a member of the Transaction Committee, met with Kravis and Roberts, the co-CEOs of KKR, in order to discuss the Proposed Transaction. At this meeting, Hubbard requested that KKR increase the proposed consideration above the most recently proposed exchange ratio of 0.50 KKR common units per KFN common share. Kravis and Roberts informed Hubbard that KKR was unwilling to do so.

63. On December 10, 2013, the Board and the Transaction Committee held meetings. Kravis, Roberts, and other KKR representatives attended a portion of the Board meeting to discuss KKR's business with the Board.

64. KKR ultimately informed Sandler O'Neill that KKR was willing to increase the proposed consideration to only 0.51 KKR common units per KFN common share, with consideration consisting entirely of KKR common units. KKR further stated that it would not under any circumstances further increase its offer.

65. Later in the day on December 10, 2013, Hazen, at Edwards' request, contacted representatives of KKR to request that KKR increase the proposed exchange ratio to 0.52 KKR common units per KFN common share, but was informed by KKR that the currently proposed exchange ratio of 0.51 KKR common units per KFN common share was KKR's best and final offer. This exchange ratio had an implied value for the Company of only \$12.79 per share based on the closing prices of KFN and KKR the day the Merger Agreement was executed and announced.

66. On December 13, 2013, the Board held a telephonic meeting to discuss the Proposed Transaction. After a discussion, the Board meeting was adjourned, and a meeting of the Transaction Committee was convened. At this meeting, representatives of Sandler O'Neill rendered an opinion to the Transaction Committee that the consideration offered by KKR was fair, from a financial point of view, to the holders of KFN common shares, despite the fact that Sandler O'Neill set a price target for the Company at \$25 per share only two months prior. Following discussion, the members of the Transaction Committee voted to recommend that the Board approve the Merger Agreement. Following the conclusion of the Transaction Committee

meeting, the Board meeting was reconvened and the Board approved and declared advisable the Merger Agreement and the Proposed Transaction.

67. On December 15 and 16, 2013, the board of directors of KKR's managing partner, KKR Management LLC, met to discuss and approve the Proposed Transaction.

68. On December 16, 2013, KKR, Fund Holdings, Merger Sub, and KFN executed the Merger Agreement, and the parties issued a joint press release announcing the Proposed Transaction.

The Proposed Transaction

69. The Company entered into the Merger Agreement on December 16, 2013, pursuant to which KKR will acquire all of the outstanding shares of common stock of the Company in a stock-for-stock transaction, with KFN's stockholders receiving only 0.51 common units of KKR for each common share of KFN.

70. On December 16, 2013, KFN filed a Form 8-K with the SEC, attaching as Exhibit 2.1 the Merger Agreement.

71. To the detriment of the Company's stockholders, the terms of the Merger Agreement substantially favor KKR and are calculated to unreasonably dissuade potential suitors from making competing offers.

72. For example, the Individual Defendants have all but ensured that another entity will not emerge with a competing proposal by agreeing to a "No Solicitation" provision in Section 6.6 of the Merger Agreement that prohibits the Individual Defendants from soliciting alternative proposals and severely constrains their ability to communicate and negotiate with potential buyers who wish to submit or have submitted unsolicited alternative proposals. Section 6.6(a) of the Merger Agreement states:

(a) Subject to Section 6.6(c) through Section 6.6(f), the Company agrees that, from the date of this Agreement until the Closing or, if earlier, the termination of this Agreement in accordance with Article VIII, neither it nor any of its subsidiaries shall, and that it shall use its reasonable best efforts to cause its and its subsidiaries' directors, officers, employees, agents, investment bankers, attorneys, accountants and other representatives (collectively, "Representatives") not to, directly or indirectly, (i) initiate or solicit or knowingly encourage any inquiries with respect to, or the making of a Company Acquisition Proposal, (ii) engage in any negotiations concerning, or provide any confidential

information or data to any Person relating to, a Company Acquisition Proposal, (iii) approve or recommend, or propose publicly to approve or recommend, any Company Acquisition Proposal, (iv) approve or recommend, or propose publicly to approve or recommend, or execute or enter into, any letter of intent, agreement in principle, merger agreement, acquisition agreement, option agreement or other similar agreement relating to any Company Acquisition Proposal (each a “Company Acquisition Agreement”), or (v) propose publicly or agree to do any of the foregoing relating to any Company Acquisition Proposal.

73. Moreover, Section 6.6(g) of the Merger Agreement provides:

(g) The Company agrees that it and its subsidiaries will (i) immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Person (other than the parties) conducted prior to the date of this Agreement with respect to any Company Acquisition Proposal and (ii) request that each third party that has heretofore executed a confidentiality agreement that relates to a Company Acquisition Proposal (other than Parent) return or destroy all confidential information heretofore furnished to such third party by the Company or on its behalf. The Company agrees that it and its subsidiaries will take the necessary steps to promptly inform its and its subsidiaries’ Representatives of the obligations undertaken in this Section 6.6.

74. Further, pursuant to Section 6.6(h) of the Merger Agreement, the Company must advise KKR, within twenty-four hours, of any proposals or inquiries received from other parties, including, *inter alia*, the identity of the party making the proposal and the material terms and conditions of the proposal. Moreover, the Company is required to “keep [KKR] informed orally, as soon as is reasonably practicable, of the status of any Company Acquisition Proposal.” Section 6.6(h) of the Merger Agreement states:

(h) From and after the date of this Agreement, the Company shall promptly orally notify Parent of any request for information or any inquiries, proposals or offers relating to a Company Acquisition Proposal indicating, in connection with such notice, the name of such Person making such request, inquiry, proposal or offer and the material terms and conditions of any proposals or offers and the Company shall provide to Parent written notice of any such inquiry, proposal or offer within 24 hours of such event and copies of any written or electronic correspondence to or from any Person making an Company Acquisition Proposal. The Company shall keep Parent informed orally, as soon as is reasonably practicable, of the status of any Company Acquisition Proposal, including with respect to the status and terms of any such proposal or offer and whether any such proposal or offer has been withdrawn or rejected and the Company shall provide to Parent written notice of any such withdrawal or rejection and copies of any written proposals or requests for information within 24 hours. The Company also agrees to provide any information to Parent (not previously provided to Parent) that it is providing to another Person pursuant to this Section 6.6 at substantially the same time it provides such information to such other Person. All information provided to Parent under this Section 6.6

1 shall be kept confidential by Parent in accordance with the terms of the
2 Confidentiality Agreement.

3 75. Moreover, the Merger Agreement contains a highly restrictive “fiduciary out”
4 provision permitting the Board to withdraw its approval of the Proposed Transaction under
5 extremely limited circumstances, and grants KKR a “matching right” with respect to any
6 “Superior Proposal” made to the Company. Section 6.6(e) of the Merger Agreement provides:

7 (e) Notwithstanding anything in this Agreement to the contrary, nothing
8 contained in this Agreement shall prevent the Company from, at any time prior
9 to, but not after, the time of the receipt of the Company Shareholder Approval, in
10 response to the receipt of a written unsolicited bona fide Company Acquisition
11 Proposal after the date of this Agreement that did not result from a breach of
12 Sections 6.6(a) and (g), (i) terminating this Agreement pursuant to
13 Section 8.1(e) in order to enter into a definitive written agreement with respect to
14 such Company Acquisition Proposal or (ii) effecting a Company Change of
15 Recommendation, if, prior to taking any of the actions described in clauses (i) or
16 (ii), (A) the Company Board determines in good faith, after consultation with its
17 outside legal counsel and financial advisors, that (x) failure to take such action
18 would reasonably be expected to be inconsistent with the Company’s directors’
19 fiduciary duties under Applicable Law of the State of Delaware and (y) such
20 Company Acquisition Proposal constitutes a Company Superior Proposal,
21 (B) Parent shall have received written notice (a “Superior Proposal Notice”) of
22 the Company’s intention to take such action at least four business days prior to
23 the taking of such action, and (C) the Company Board continues to believe, after
24 taking into account any modifications to the terms of the transactions
25 contemplated by this Agreement that are offered by Parent after its receipt of the
26 Superior Proposal Notice, that such Company Acquisition Proposal continues to
27 constitute a Company Superior Proposal. Any material amendment to the
28 financial terms or any other material amendment of such Company Acquisition
Proposal shall require a new Superior Proposal Notice and the Company and the
Company Board shall be required to comply again with the requirements of this
Section 6.6(e); *provided, however*, that the reference herein to four business days
shall be deemed to be a reference to two business days.

76. Further locking up control of the Company in favor of KKR is Section 8.2(b) of
the Merger Agreement, which contains provision for a “Termination Fee” of \$26.25 million,
payable by the Company to KKR if the Individual Defendants cause the Company to terminate
the Merger Agreement pursuant to the lawful exercise of their fiduciary duties. KFN may also
be required to reimburse KKR for its expenses up to \$7.5 million.

77. By agreeing to all of the deal protection devices, the Individual Defendants have
locked up the Proposed Transaction and have precluded other bidders from making successful
competing offers for the Company.

78. The consideration to be paid to plaintiff and the Class in the Proposed Transaction is unfair and inadequate because, among other things, the intrinsic value of KFN is materially in excess of the amount offered in the Proposed Transaction.

79. At the time of the approval and execution of the Merger Agreement, KKR common units were trading at a price near their 52-week high, while KFN common shares were trading at a price near their 52-week low, thus distorting the fairness of the consideration offered in the Proposed Transaction.

80. In addition, in October 2013, Sandler O'Neill indicated that the Company's price target was \$25 per share. Moreover, Credit Suisse set a price target of \$21 per share.

81. The Proposed Transaction will deny Class members their right to share proportionately and equitably in the true value of the Company's valuable and profitable business, and future growth in profits and earnings.

82. As a result, defendants have breached their fiduciary duties they owe to the Company's public stockholders because the stockholders will not receive adequate or fair value for their KFN common stock in the Proposed Transaction.

Defendants' Interests in the Proposed Transaction

83. As reflected in the Registration Statement, certain of the Company's directors and officers stand to receive substantial benefits as a result of the Proposed Transaction.

84. For example, as a result of the Proposed Transaction, the directors and officers of the Company stand to receive substantial benefits for their currently illiquid shares of Company stock. As reflected in the table below, the directors and officers own approximately 1.6 million shares in the aggregate:

Name and Address of Beneficial Owner	Number of KFN Common Shares Beneficially Owned
Paul M. Hazen	707,756
Craig J. Farr	0
Michael R. McFerran	152,995
Nicole J. Macarchuk	54,427
Tracy L. Collins	68,043
Robert L. Edwards	19,869
Vincent Paul Finigan	12,607
R. Glenn Hubbard	55,341
Ross J. Kari	57,766

Ely L. Licht	85,943
Deborah H. McAneny	33,616
Scott C. Nuttall	375,564
Scott A. Ryles	32,688
Willy R. Strothotte	0
<i>All officers and directors as a group (14 persons)</i>	1,656,615

85. In addition, the restricted KFN common shares held by KKR's directors and executive officers (who are employed by KKR) will be converted into 0.51 restricted KKR common units upon consummation of the Proposed Transaction, as reflected in the following table:

Director/Executive Officer	Restricted Shares
Craig Farr	0
Michael R. McFerran	70,353
Nicole J. Macarchuk	44,874
Tracy L. Collins	14,538
Robert L. Edwards	15,429
Vincent Paul Finigan	6,548
Paul M. Hazen	5,057
R. Glenn Hubbard	0
Ross J. Kari	14,538
Ely L. Licht	14,538
Deborah H. McAneny	0
Scott C. Nuttall	0
Scott A. Ryles	14,538
Willy R. Strothotte	0

86. Moreover, each KFN phantom share owned by the directors of KFN will be converted into a fully-vested phantom share of KKR, as reflected by the table below:

Director/Executive Officer	Phantom Shares	Restricted Phantom Shares
Craig Farr	0	0
Michael R. McFerran	0	0
Nicole J. Macarchuk	0	0
Tracy L. Collins	0	0
Robert L. Edwards	0	0
Vincent Paul Finigan	79,179	7,990
Paul M. Hazen	5,770	19,864
R. Glenn Hubbard	211,763	20,768
Ross J. Kari	0	0
Ely L. Licht	0	0
Deborah H. McAneny	53,909	14,538
Scott C. Nuttall	0	0
Scott A. Ryles	0	0
Willy R. Strothotte	179,032	14,538

1 87. Accordingly, the Company's directors and officers stand to receive significant
2 benefits and thus have reasons to support the Proposed Transaction, which is otherwise against
3 the best interests of KFN's stockholders

4 ***The Materially Misleading Registration Statement***

5 88. Defendants filed the Registration Statement with the SEC on January 15, 2014 in
6 connection with the Proposed Transaction. As alleged below and elsewhere herein, the
7 Registration Statement omits material information that must be disclosed to KFN's stockholders
8 to enable them to render an informed decision with respect to the Proposed Transaction.

9 89. The Registration Statement omits material information with respect to the
10 process and events leading up to the Proposed Transaction, as well as the opinions and analyses
11 of KFN's financial advisor, Sandler O'Neill. This omitted information, if disclosed, would
12 significantly alter the total mix of information available to KFN's stockholders.

13 90. The Registration Statement is materially misleading in that it fails to disclose
14 what authority and/or limitations the Board imposed on the Transaction Committee with respect
15 to considering any proposal from KKR or seeking alternative bidders.

16 91. The Registration Statement is materially misleading in that it fails to disclose
17 whether KKR's financial advisors in connection with the Proposed Transaction, Goldman,
18 Sachs & Co. ("Goldman Sachs") and Lazard Frères & Co. LLC ("Lazard"), represented KFN in
19 the past.

20 92. The Registration Statement fails to disclose the reason for selecting Sandler
21 O'Neill and whether the Transaction Committee considered other financial advisors.

22 93. The Registration Statement is materially misleading in that it fails to disclose the
23 closing price of KFN shares and KKR units each time KKR submitted an offer to acquire the
24 Company at a certain stock-for-stock exchange ratio.

25 94. The Registration Statement fails to disclose the reason KKR deemed a taxable
26 transaction preferable to a non-taxable transaction, given the fact that a stock-for-stock
27 transaction could be structured as a non-taxable transaction.

1 95. The Registration Statement does not indicate the reason the Transaction
2 Committee preferred all-cash consideration and why KKR refused to consider paying any
3 portion of the consideration in cash.

4 96. The Registration Statement is materially misleading in that it fails to disclose the
5 Company's projections used by Sandler O'Neill in its analyses.

6 97. The Registration Statement fails to disclose the source of analyst consensus
7 estimates that was considered by Sandler O'Neill.

8 98. The Registration Statement fails to disclose the projected cost savings and other
9 synergies considered by Sandler O'Neill.

10 99. With respect to the Transaction Multiples analysis performed by Sandler O'Neill,
11 the Registration Statement fails to disclose whether there were any dilutive securities reflected
12 in the Company's 204,824,159 outstanding share count, and if so, the fully diluted share count
13 and correct calculation. In addition, the Registration Statement fails to disclose KFN's net asset
14 value and how it was calculated.

15 100. With respect to the Comparable Company Analysis for KFN, the Registration
16 Statement fails to disclose: (i) the company-by-company pricing multiples and metrics and their
17 observed ranges; (ii) the price-to-book multiples, distinguishing between "book value" and
18 "tangible book value" as necessary; and (iii) how Sandler O'Neill used the analysis in assessing
19 the fairness of the offer, given that no value conclusions were reached and no implied exchange
20 ratio was estimated.

21 101. With respect to the Comparable Company Analysis for KKR, the Registration
22 Statement fails to disclose: (i) the company-by-company pricing multiples and metrics and their
23 observed ranges; (ii) the definition of "economic net income" ("ENI") and distinguish ENI from
24 "net income"; (iii) how "implied ENI growth" was calculated; and (iv) how Sandler O'Neill
25 used the analysis in assessing the fairness of the offer, given that no value conclusions were
26 reached and no implied exchange ratio was estimated.

1 102. With respect to the Research Analyst Estimates and Price Targets analysis
2 performed by Sandler O'Neill, the Registration Statement fails to disclose the range of price
3 targets rather than just the mean and median figures.

4 103. With respect to the Net Present Value Analysis of KFN performed by Sandler
5 O'Neill, the Registration Statement fails to disclose: (i) what Sandler O'Neill performed its
6 analysis of, and if cash flow, whether they were levered or unlevered (and the definition or
7 formula); (ii) what "circumstances" Sandler O'Neill performed its analysis under; and (iii) the
8 source of the range of P/TBV multiples assumed in Sandler O'Neill's sensitivity table. The
9 Registration Statement also indicates that Sandler O'Neill sensitized three variables (net income
10 variance [+/- 25%], dividend yields [7.0%-12.0%], and dividend amounts [\$0.165-\$0.275]).
11 However, the table on page 74 of the Registration Statement only sensitizes two of those
12 variables (net income variance and dividend yield). This inconsistency must be corrected.

13 104. With respect to the Net Present Value Analysis of KKR performed by Sandler
14 O'Neill, the Registration Statement fails to disclose: (i) what Sandler O'Neill performed its
15 analysis of, and if cash flow, whether they were levered or unlevered (and the definition or
16 formula); and (ii) what "circumstances" Sandler O'Neill performed its analysis under.

17 105. With respect to the Analysis of Selected Merger Transactions performed by
18 Sandler O'Neill, the Registration Statement fails to disclose: (i) the transaction-by-transaction
19 values and pricing multiples and the observed ranges; and (ii) how Sandler O'Neill used its
20 Analysis of Selected Merger Transactions in assessing the fairness of the offer, given that no
21 value conclusions were reached and no implied exchange ratio was estimated.

22 106. With respect to Sandler O'Neill's Pro Forma Results Analysis, the Registration
23 Statement fails to disclose the definitions of "distributable earnings" and "income distribution,"
24 and fails to distinguish these from "distributions," "net income," and "Economic net income."

25 107. Lastly, the Registration Statement is materially misleading in that it fails to
26 disclose the fees received by Sandler O'Neill from KFN for investment banking services and the
27 nature of those services.

28 108. As such, plaintiff seeks enjoinder of the Proposed Transaction.

COUNT I

**(Violations of Section 14(a) of the Exchange Act and Rule 14a-9
Against the Company and the Individual Defendants)**

109. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

110. Defendants have issued the Registration Statement with the intention of soliciting stockholder support of the Proposed Transaction.

111. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, provides that a proxy statement shall not contain “any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statement therein not false or misleading.” *See* 17 C.F.R. § 240.14a-9.

112. Specifically, the Registration Statement violates Section 14(a) and Rule 14a-9 because it is materially misleading in numerous respects and omits material facts, including those set forth above. Moreover, in the exercise of reasonable care, defendants should have known that the Registration Statement is materially misleading and omits material facts that are necessary to render them non-misleading.

113. The Company and the Individual Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth.

114. The misrepresentations and omission in the Registration Statement are material to plaintiff, and plaintiff will be deprived of his entitlement to cast a fully informed vote if such misrepresentations and omissions are not corrected prior to the vote on the Proposed Transaction.

COUNT II

(Violations of Section 20(a) of the Exchange Act Against the Individual Defendants)

115. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

1 116. The Individual Defendants acted as controlling persons of KFN within the
2 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as
3 directors and/or officers of KFN, and participation in the Company's operations and/or intimate
4 knowledge of the false statements contained in the Registration Statement filed with the SEC,
5 they had the power to influence and control, and did influence and control, the decision making
6 of the Company, including the content and dissemination of the various statements that plaintiff
7 contends are false and misleading.

8 117. Each of the Individual Defendants was provided with, or had unlimited access to
9 copies of, the Registration Statement and other statements alleged by plaintiff to be misleading
10 prior to and/or shortly after these statements were issued and had the ability to prevent the
11 issuance of the statements or cause the statements to be corrected.

12 118. In particular, each of the Individual Defendants had direct and supervisory
13 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have
14 had the power to control or influence the particular transactions giving rise to the securities
15 violations alleged herein, and exercised the same. The Registration Statement at issue contains
16 the unanimous recommendation of each of the Individual Defendants to approve the Proposed
17 Transaction. They were, thus, directly involved in the making of this document.

18 119. In addition, as the Registration Statement sets forth at length, and as described
19 herein, the Individual Defendants were each involved in negotiating, reviewing, and approving
20 the Proposed Transaction. The Registration Statement purports to describe the various issues
21 and information that the Individual Defendants reviewed and considered. The Individual
22 Defendants participated in drafting and/or gave their input on the content of those descriptions.

23 120. By virtue of the foregoing, the Individual Defendants have violated Section 20(a)
24 of the Exchange Act.

25 121. As set forth above, the Individual Defendants have each violated Section 14(a)
26 and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as
27 controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act.
28

As a direct and proximate result of Individual Defendants' conduct, plaintiff and the Class will be irreparably harmed.

COUNT III

(Breach of Fiduciary Duties Against the Individual Defendants)

122. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

123. As members of the Company's Board, the Individual Defendants have fiduciary obligations to: (a) undertake an appropriate evaluation of KFN's net worth as a merger/acquisition candidate; (b) take all appropriate steps to enhance KFN's value and attractiveness as a merger/acquisition candidate; (c) act independently to protect the interests of the Company's public stockholders; (d) adequately ensure that no conflicts of interest exist between the Individual Defendants' own interests and their fiduciary obligations, and, if such conflicts exist, to ensure that all conflicts are resolved in the best interests of KFN's public stockholders; (e) actively evaluate the Proposed Transaction and engage in a meaningful auction with third parties in an attempt to obtain the best value on any sale of KFN; and (f) disclose all material information to the Company's stockholders.

124. The Individual Defendants have breached their fiduciary duties to plaintiff and the Class.

125. As alleged herein, the Individual Defendants have initiated a process to sell KFN that undervalues the Company. In addition, by agreeing to the Proposed Transaction, the Individual Defendants have capped the price of KFN at a price that does not adequately reflect the Company's true value. The Individual Defendants also failed to sufficiently inform themselves of KFN's value, or disregarded the true value of the Company. Furthermore, any alternate acquiror will be faced with engaging in discussions with a management team and Board that are committed to the Proposed Transaction.

126. As such, unless the Individual Defendants' conduct is enjoined by the Court, they will continue to breach their fiduciary duties to plaintiff and the other members of the Class.

127. Plaintiff and the members of the Class have no adequate remedy at law.

COUNT IV**(Breach of Fiduciary Duty of Disclosure Against the Individual Defendants)**

128. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

129. The Individual Defendants have caused materially misleading and incomplete information to be disseminated to the Company's public stockholders. The Individual Defendants have an obligation to be complete and accurate in their disclosures.

130. The Registration Statement fails to disclose material information, including financial information and information necessary to prevent the statements contained therein from being misleading.

131. The misleading omissions and disclosures by defendants concerning information and analyses presented to and considered by the Board and its advisors affirm the inadequacy of disclosures to the Company's stockholders. Because of defendants' failure to provide full and fair disclosure, plaintiff and the Class will be stripped of their ability to make an informed decision with respect to the Proposed Transaction, and thus are damaged thereby.

132. Plaintiff and the members of the Class have no adequate remedy at law.

COUNT V**(Breach of Fiduciary Duty Against KKR)**

133. Plaintiffs repeat and reallege the preceding allegations as if fully set forth herein.

134. As set forth herein, KKR effectively controls KFN, including running the day-to-day operations of KFN. As such, KKR owed and owes fiduciary duties to the Company's stockholders.

135. As a product of the negotiated Merger Agreement between KFN and KKR, the Proposed Transaction is subject to entire fairness review. The Proposed Transaction provides grossly inadequate consideration to KFN's public stockholders for their Company stock. The Board and the Transaction Committee lacked independence from KKR and were unable to truly seek out reasonable alternatives or maximize value as a result of KKR's likely refusal to permit

the Board or Transaction Committee to seek strategic alternatives to its proposal. As such, the Proposed Transaction is unfair as to price and process.

136. Plaintiffs and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can plaintiffs and the Class be fully protected from the immediate and irreparable injury that KKR's actions threaten to inflict.

COUNT VI

(Aiding and Abetting the Board's Breaches of Fiduciary Duties Against KFN)

137. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

138. KFN, by reason of its status as a party to the Merger Agreement and/or possession of nonpublic information, has aided and abetted the aforementioned breaches of fiduciary duties.

139. Such breaches of fiduciary duties could not and would not have occurred but for the conduct of KFN which, therefore, has aided and abetted such breaches in KKR's attempted acquisition of KFN.

140. As a result of the unlawful actions of KFN, plaintiff and the Class will be irreparably harmed in that they will not receive true value for KFN's assets and business. Unless the actions of KFN are enjoined by the Court, they will continue to aid and abet the breaches of fiduciary duties owed to plaintiff and the Class.

141. Plaintiff and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment and relief as follows:

A. Ordering that this action may be maintained as a class action and certifying plaintiff as the Class representative and plaintiff's counsel as Class counsel;

B. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

C. In the event defendants consummate the Proposed Transaction, rescinding it and

1 setting it aside or awarding rescissory damages to plaintiff and the Class;

2 D. Directing defendants to account to plaintiff and the Class for their damages
3 sustained because of the wrongs complained of herein;

4 E. Awarding plaintiff the costs of this action, including reasonable allowance for
5 plaintiff's attorneys' and experts' fees; and

6 F. Granting such other and further relief as this Court may deem just and proper.
7

8 DATED: January 31, 2014

GREEN & NOBLIN, P.C.

9
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